

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 4:20-cv-00957-SDJ

## EXHIBIT 9

**PLAINTIFF STATES' OPENING BRIEF TO THE SPECIAL MASTER  
FOR THE MARCH 21, 2024 HEARING**

**From:** MCCALLUM, Robert <rob.mccallum@freshfields.com>  
**Sent:** Tuesday, March 12, 2024 2:30 PM  
**To:** Peter M. Hillegas; VACA, Lauren; Bryce Callahan; Paul Yetter; John Harkrider; Daniel Bitton; ELMER, Julie (JSE); MAHR, Eric (EJM); BAYOUMI, Jeanette; Bracewell, Mollie; Zorn, Matt; SESSIONS, Justina (JKS); SONG, Tinny  
**Cc:** NRFAdTech; Zeke DeRose III; Jonathan Wilkerson; Noah Heinz; zina.bash@kellerpostman.com; Trevor Young; Business Litigation Section  
**Subject:** RE: The State of Texas, et al v. Google LLC - Ordered Dashboard Deposition  
**Attachments:** 2024.03.12 Ltr. from R. McCallum re Dashboards 30(b)(6) Witness.pdf

Counsel –

Please see attached.

Kind regards,  
Rob

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**From:** Peter M. Hillegas <peter.hillegas@nortonrosefulbright.com>  
**Sent:** Monday, March 11, 2024 6:34 PM  
**To:** MCCALLUM, Robert <rob.mccallum@freshfields.com>; VACA, Lauren <Lauren.Vaca@freshfields.com>; Bryce Callahan <bcallahan@yettercoleman.com>; Paul Yetter <pyetter@yettercoleman.com>; John Harkrider <jharkrider@axinn.com>; Daniel Bitton <dbitton@axinn.com>; ELMER, Julie (JSE) <Julie.Elmer@freshfields.com>; MAHR, Eric (EJM) <Eric.MAHR@freshfields.com>; BAYOUMI, Jeanette <Jeanette.Bayoumi@freshfields.com>; Bracewell, Mollie <mbracewell@yettercoleman.com>; Zorn, Matt <mzorn@yettercoleman.com>; SESSIONS, Justina (JKS) <Justina.Sessions@freshfields.com>; SONG, Tinny <Tinny.Song@freshfields.com>  
**Cc:** NRFAdTech <NRFAdTech@nortonrosefulbright.com>; Zeke DeRose <Zeke.DeRose@LanierLawFirm.com>; Jonathan Wilkerson <Jonathan.Wilkerson@LanierLawFirm.com>; Noah Heinz <Noah.Heinz@kellerpostman.com>; zina.bash@kellerpostman.com; Trevor Young <Trevor.Young@oag.texas.gov>; Business Litigation Section <businesslitigationsection@LanierLawFirm.com>; Peter M. Hillegas <peter.hillegas@nortonrosefulbright.com>  
**Subject:** The State of Texas, et al v. Google LLC - Ordered Dashboard Deposition

Counsel,

Special Master Moran ordered you to provide a “30(b)(6) witness with personal knowledge of Google’s dashboards for Display Ads for deposition.” [REDACTED] was unprepared to discuss Google’s Display Ads dashboards as a 30(b)(6) witness. He was unable to testify regarding any dashboard with particularity, and was unable to act as a records custodian with respect to Google’s dashboards. [REDACTED] lack of knowledge of Google’s relevant dashboards further precludes the Special Master’s ordered meet and confer “regarding the scope of the most highly relevant dynamic Display Ads dashboards to be made available and produced by Google in a secure code room.”

The States will seek production of another witness, at Google’s expense, to be deposed in front of the Special Master, as well as all fees and expenses related to [REDACTED] deposition and any other remedies the Special Master deems appropriate. Such witness must be prepared to personally access any relevant dashboard during the deposition. To the extent Google opposes these remedies, the States are available to meet and confer tomorrow before noon.

Respectfully,

Peter

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March 12, 2024

**Re: *State of Texas et al. v. Google LLC*, No. 4:20-cv-957-SDJ (E.D. Tex.)**

Counsel:

We write regarding Plaintiffs' March 11, 2024 email concerning the 30(b)(6) testimony of [REDACTED] on Google's Display Ads dashboards. As set forth below, your email reflects a pretextual effort to raise another issue with the Special Master without following the required meet and confer process.

As you know, Google suggested that yesterday's dashboard deposition—which the Special Master anticipated would be “relatively short”—be conducted remotely. Plaintiffs pressed for it to be held in person and then flew counsel from Chicago to New York to take the deposition, which lasted just over two hours on the record. At the deposition, Plaintiffs' counsel told Google's counsel that the deposition did not need to occur in person but that Texas insisted that he travel to New York from Chicago. Two hours after the deposition concluded, and without regard to the content of the testimony given, Plaintiffs emailed to say that they would be seeking another deposition before the Special Master, at Google's expense, and that Google should bear all of the needless “fees and expenses related to [REDACTED] deposition” that Plaintiffs chose to incur. There is no basis for those demands or for additional deposition time.

Google produced a Staff Software Engineer—employed by Google for 11 years—to testify. As a member of the Reporting Unit of the Display Ads business, [REDACTED] testified that he had personal knowledge of creating and using dashboards related to display ads, and that

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he indeed had a “very good understanding” about those dashboards. Google prepared [REDACTED] for his deposition in three separate meetings over the course of a week.

[REDACTED] directly addressed the subject of the Special Master’s Order, which was intended to provide a foundation for the parties “to confer regarding the scope of the most highly relevant dynamic Display Ads dashboards to be made available and produced by Google in a secure source code room.” ECF No. 265 at 6. [REDACTED] testified that there are likely hundreds of thousands (if not millions) of dashboards at Google that could reflect aspects of Google’s Display Ads business, as dashboards are frequently created by individual employees on an ad hoc basis; some of these have become popular at times within particular teams and sub-teams. [REDACTED] confirmed there is no commonly accepted set of dashboards that are used across the whole of the Display Ads business and so the best way to determine which dashboards are used (or were used at a particular time) by any of the many teams and sub-teams with Display Ads is to ask those teams directly. [REDACTED] then identified various particular teams and sub-teams within Display Ads that use dashboards and provided points of contact. [REDACTED] also explained that dashboards are not a source of information separate from the underlying data.

The Special Master’s Order specifically referenced the “Lumina” dashboard—and any “analogue or equivalent”—and stated that the “Special Master expects the parties’ discussions to principally focus on such dashboard(s).” *Id.* at 6-7, n.4 Mr. [REDACTED] confirmed that he had personally used Lumina as part of his work [REDACTED]. He identified examples of Lumina content in documents shown to him in Plaintiffs’ Exhibit 6, and answered Plaintiffs’ various Lumina-related questions. [REDACTED] identified the Google employee responsible for creating Lumina, but added that he himself would have comparable knowledge of Lumina. [REDACTED] confirmed that he was not aware of [REDACTED], but he did point to certain dashboards that were commonly used by the [REDACTED] (including identification of the [REDACTED] dashboard and other [REDACTED] dashboards). [REDACTED] further identified the [REDACTED] dashboard as a dashboard that provides various metrics relevant to Google’s Display Ads business.

Plaintiffs did not focus their questions, as the Special Master directed, on seeking to identify any “analogue or equivalent” to Lumina. Rather, Plaintiffs cherry-picked a list of approximately 97 “go” links (most, but not all, of which included the word “dashboard”) and asked if [REDACTED] knew what they were. This list—prepared by Plaintiffs’ counsel—was not provided to Google beforehand, nor would it have been reasonable to insist that Google prepare a witness to testify on nearly 100 different hyperlinks. Plaintiffs also asked [REDACTED] whether he had undertaken his own investigation to identify dashboards relevant to the various patterns of conduct underlying the States’ Fourth Amended Complaint. And Plaintiffs showed [REDACTED] a 32 page slide deck that he did not author or receive and asked “Are you aware of any errors in this document?” Rough Tr. at 38:24-25.

Finally, we note that Plaintiffs’ examination entirely overlooked the extent to which dashboards can, in fact, “be made available and produced by Google in a secure source code room.” ECF No. 265 at 6. It was only when Google questioned [REDACTED] that it became clear it would not be feasible for Google to make dashboards available in the kind of “secure source code room” contemplated by the governing ESI Order. That is because it is not possible

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to view Google's dashboards without access to the broader Google network and proprietary architecture, and because it is not possible to view all dashboards without appropriate permission to access the underlying data sources that serve as the inputs to those dashboards. Though Plaintiffs failed to ask, [REDACTED] also testified that if raw data existed outside of Google's systems—as it does here because Google has produced 200 terabytes of data in response to Plaintiffs' RFPs—that a dashboard to view slices of this data can be easily created with standard and widely-available tools. In other words, if Plaintiffs want to view a particular subset of the data Google has provided, they may do so.

We remain available to meet and confer on the timeline specified by the Special Master regarding an appropriate scope of production. We are available tomorrow between 10am and 2pm ET and on Thursday between 11am and 2pm ET.

Sincerely,

/s/ Robert J. McCallum

Robert J. McCallum